

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**IN RE: EQUIFAX, INC., CUSTOMER
DATA SECURITY BREACH
LITIGATION**

MDL Docket No. 2800
1:17-MD-2800-TWT

CONSUMER ACTIONS

**APPLICATION FOR APPOINTMENT OF JEREMIAH FREI-PEARSON
AS LEAD COUNSEL OR MEMBER OF THE STEERING COMMITTEE
FOR THE CONSUMER PLAINTIFF CLASS**

Pursuant to the Court’s Case Management Orders (ECF Nos. 23, 87) and Federal Rule of Civil Procedure 23(g), Jeremiah Frei-Pearson of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP (“FBFG”) hereby applies, on behalf of Plaintiffs Dallas Perkins, Jeffrey Pryor, Kenneth Yoeckel, and LaShawn Brown, to serve as Lead Counsel for plaintiffs on the Consumer Actions track. In the alternative, Mr. Frei-Pearson hereby applies to serve on the Steering Committee for plaintiffs on the Consumer Actions track.

Mr. Frei-Pearson and FBFG have been appointed as class counsel in five data breach class actions, including multi-district coordinated actions, and Mr. Frei-Pearson is well-suited to lead this litigation. For example, Mr. Frei-Pearson was appointed co-lead class counsel in the consolidated data breach litigation *Saint Joseph Health System Medical Information Cases*, JCCP No. 4716 (Cal Sup. Ct.) (“*Saint Joseph*”), where the plaintiffs secured a settlement providing more money per capita to individual class members than any other known data breach settlement. Mr. Frei-Pearson and his co-lead counsel successfully moved to certify a class of approximately 31,802 data breach victims and defeated the defendant’s motion for summary

judgment. Both of those decisions were upheld by the Court of Appeal. Mr. Frei-Pearson helped negotiate a Court-approved settlement for *Saint Joseph* valued at approximately \$39 million.

Mr. Frei-Pearson has met and conferred with numerous attorneys who will be seeking leadership roles in this litigation and considered participating in proposed leadership slates. Mr. Frei-Pearson submits this application individually to serve as Lead Counsel, or on the Steering Committee, because he believes it is in the best interests of the class for the leadership structure to include him as a member -- given his extensive experience in class action litigation in general and privacy and data breach class actions specifically -- and because he is willing and able to work collegially with any of the numerous capable attorneys seeking to represent the putative class.¹ Indeed, Mr. Frei-Pearson and FBFG have successfully and collegially worked with many of the attorneys who have so far applied for a leadership position in this action.

I. Mr. Frei-Pearson Has The Experience, Knowledge, And Qualifications Necessary To Best Represent The Class Members In This Litigation.

Jeremiah Frei-Pearson is a graduate of Stanford Law School and a founding partner of FBFG. Mr. Frei-Pearson and the lawyers of FBFG have successfully litigated complex class actions in federal and state courts across the country, and have obtained successful results for clients against some of the world's largest corporations. *See* FBFG Firm Resume attached hereto as Exhibit A.

Mr. Frei-Pearson is an experienced litigator, who practices in federal and state courts throughout the country. His areas of experience include data breach class actions, privacy, consumer fraud, employment law, and civil rights. *See id.* The National Trial Lawyers

¹ Mr. Frei-Pearson and FBFG have made no agreements or arrangements with any other counsel, other than the commitment to work together collegially in the best interests of the class.

Association selected Mr. Frei-Pearson as a member of the Top 100 Trial Lawyers every year since 2014. Mr. Frei-Pearson is a member of the Best Attorneys of America, a distinction that is limited to 100 New York lawyers, and he has also been designated a Super Lawyer for the last four years, a distinction awarded to only 5% of the New York Metro Area. *See id.*

Mr. Frei-Pearson has received numerous awards for his legal work, including the New York City Bar Association's Thurgood Marshall Award for his work on death penalty cases and a citation from the New York City Council for his litigation on behalf of children. *See id.* Mr. Frei-Pearson is a recognized expert in the field of data breach litigation, having recently given a presentation entitled "Developments in Data Breach Law: Seeking Redress for Data Breach Victims" for Lawline.com's Continuing Legal Education program.

A. Mr. Frei-Pearson Has Significant Experience And Proven Results In Complex Data Breach And Identity Theft Litigation.

As referenced above, Mr. Frei-Pearson's career achievements include serving as co-lead class counsel in *Saint Joseph Health System Medical Information Cases*, JCCP No. 4716 (Cal. Sup. Ct.). Through California's MDL-equivalent Judicial Council Coordination Proceedings, this complex data breach class action consolidated multiple cases in California state courts arising from the defendants' alleged release of the confidential medical information of over 31,000 patients.

With Mr. Frei-Pearson serving as co-lead class counsel along with Daniel S. Robinson of Robinson Calcagnie, Inc., the *Saint Joseph* plaintiffs defeated the defendants' demurrer (the California state court equivalent of a motion to dismiss) before both the California Superior Court and Court of Appeal. After more than two years of litigation, which involved extensive discovery including 20 depositions and over 300,000 pages of document production, the Court

granted plaintiffs' class certification motion. One month later, the Court denied the defendants' motion for summary judgment. Mr. Frei-Pearson and his co-counsel successfully defeated the appeals of these decisions. Shortly before the scheduled start of trial, Mr. Frei-Pearson helped negotiate a settlement valued at approximately \$39 million, which the Court finally approved on February 3, 2016. This settlement provided the most money per capita to individual class members of any known data breach settlement on record.

Mr. Frei-Pearson was also appointed as co-lead class counsel in *Castillo v. Seagate Technology LLC*, No. 16-1958 (N.D. Cal.), a consolidated data breach litigation concerning a phishing attack that allegedly exposed thousands of employees' names, addresses, salaries, and social security numbers. After helping defeat the defendant's motion to dismiss and engaging in significant formal and informal discovery, Mr. Frei-Pearson helped secure a preliminarily-approved settlement agreement with a potential value of over \$47.75 million, exclusive of attorneys' fees and costs, for a class of approximately 12,000 current and former employees and such employees' spouses and adult dependents. The proposed settlement also includes injunctive relief requiring changes to the defendant's data security practices that will offer stronger protections for sensitive personal information.

As Plaintiffs' Counsel in the *Sackin v. TransPerfect Global, Inc.*, No. 17-1469 (S.D.N.Y.) putative class action -- a data breach case alleging that thousands of employees' personal identifying information, including payroll information, was exposed to hackers due to a phishing attack -- Mr. Frei-Pearson defeated the defendant's efforts to dismiss the plaintiffs' claims arising under common law negligence, negligence *per se*, breach of express contract, breach of implied contract, unjust enrichment, and violations under New York State Law. Significantly, *TransPerfect* was the first (and, to date, only) case to hold that New York Labor Law § 203-d,

which protects employee's private information, is privately enforceable. The proposed settlement agreement, valued at approximately \$23 million, provides significant relief for a putative class of approximately 5,000 current and former employees. The preliminary approval hearing on this settlement is currently scheduled for February 8, 2018.

Mr. Frei-Pearson also currently serves as liaison counsel to the state court action in *Yahoo! Inc. Private Information Disclosure Cases*, JCCP No. 4895 (Cal. Sup. Ct.), a complex class action in California state court, and he has been counsel in numerous other data breach and privacy cases. See *In re: Zappos.com, Inc. Customer Data Security Breach Litigation* (appointed co-lead class counsel in on-going data breach class action with approximately 24 million putative class members); *Miller v. Fresh*, No. 14-880 (Mass. Suffolk Cty.) (appointed co-class counsel in privacy action alleging defendant unlawfully collected consumers' personal identification information); *Miller v. Patagonia*, No. 14-888 (Mass. Suffolk Cty.) (same).

Due to Mr. Frei-Pearson's significant experience in litigating complex data breach and identity theft cases, he respectfully contends that his inclusion as Lead Counsel, or in the alternative as a member of the Steering Committee, will significantly benefit the Consumer Plaintiffs and class members.

B. Mr. Frei-Pearson Has Significant Experience With Proven Results In Complex Class Action Litigation.

In addition to his experience in data breach and identity theft litigation, Mr. Frei-Pearson will also bring extensive experience in general complex class action litigation to a leadership role on behalf of the Consumer Plaintiffs and class members.

Mr. Frei-Pearson's complex class action experience includes:

- Appointed class counsel in *Yoeckel v. Marriott*, No. 703387 (Queens Cty. Com. Div.). Class action alleging that Marriott violated New York wage and hour laws.

On May 3, 2017, the Court certified a class and finally approved a settlement that provided class members with 100% of their maximum compensatory damages alleged.

- Appointed co-class counsel in *Reed v. Friendly's Ice Cream, LLC*, No. 15-cv-00298 (M.D. Pa.). The Court denied motions to dismiss and ruled for plaintiffs on several other motions in this wage and hour class action. On January 31, 2017, the Court certified the class, appointed an FBFG lawyer as co-lead class counsel and finally approved a settlement valued at over \$4.6 million.
- Appointed co-class counsel in *Al Fata v. Pizza Hut of America, Inc.*, No. 14-cv-376 (M.D. Fla.). The Court denied defendant's motion to compel arbitration. While Plaintiffs' class certification motion was *sub judice*, the parties reached a class settlement on behalf of a Florida class of delivery drivers alleging minimum wage violations. The Court granted final approval of the settlement, which is valued at \$3.1 million, on June 21, 2017.
- Appointed class counsel in *Hanna v. CFL Pizza, LLC*, No. 05-2011-CA-52949 (Fl. Cir. Court). On September 3, 2013, the Court granted final approval of a settlement that created a substantial settlement fund for under-reimbursed Pizza Hut franchisee delivery drivers who alleged violations of Florida minimum wage law.
- Appointed co-class counsel in *Bellaspica v. PJPA, LLC*, No. 13-3014 (E.D. Pa.). On June 22, 2016, the Court granted final approval of a FLSA collective action settlement, providing a settlement fund for under-reimbursed Papa John's franchisee pizza delivery drivers.
- Plaintiffs in *D.G. ex rel. Stricklin v. Henry*, No. 08-cv-074 (N.D. Okl.). In this class action to reform Oklahoma's foster care system, the Court certified a statewide class of Oklahoma's foster children (an opinion that was affirmed by the Tenth Circuit). As a result of this litigation, Oklahoma has committed to restructuring its state foster care agency to eliminate dangerous practices (such as an unsafe shelter where babies in state custody disproportionately suffered fractured skulls), and improve measurable outcomes for children in state custody.
- As counsel in *Charlie and Nadine H. v. Christie*, No. 99-3678 (D.N.J.), worked with the state agencies, a federally appointed monitor, and the Court to help ensure implementation of a consent decree to reform New Jersey's foster care system. Among many other significant achievements under the consent decree, New Jersey broke a record for adoptions achieved, significantly reformed supervision procedures that were inadequate, and substantially increased the percentage of foster children who subsequently attended college. Mr. Freiperson continues to be involved in this litigation in a *pro bono* capacity.

See Exhibit A.

Mr. Frei-Pearson is fully supported by the exemplary attorneys of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP. FBFG has successfully represented classes and collectives in a multitude of nationwide and multi-state actions. *See* Exhibit A. The attorneys of FBFG will likewise bring significant their experience, knowledge, and dedication to this litigation.

II. Mr. Frei-Pearson Has Demonstrated The Ability To Work Cooperatively With Other Plaintiff's Counsel And Defense Counsel

Mr. Frei-Pearson has a history of working with co-counsel and defense counsel in a collaborative manner as he pursues the best interests of the class. As one example, Mr. Frei-Pearson's approach earned him praise from the Honorable Timothy R. Rice, United States Magistrate Judge for the Eastern District of Pennsylvania, who commended Mr. Frei-Pearson both for "put[ting] the class members' interests ahead of [his] own interests" and for presenting "a great example to the bar of what zealous advocacy really means" as he was "always professional and courteous" even in the face of "contentious" litigation where it was not always returned. *Bellaspica v. PJPA*, No. 13-3014, ECF No. 148, at 14:12-22, 15:15-16:13 (E.D. Pa. June 22, 2016); *accord Kind LLC "Healthy And All Natural" Litigation*, 15-MD-2645, Dkt. No. 3 at 2 (S.D.N.Y. Nov. 13, 2015) (appointing FBFG as co-lead class counsel in a contested leadership motion for MDL, and stating that FBFG and co-lead "have exhibited leadership skills" that allow complex class action litigation to be efficiently conducted).

In the event Mr. Frei-Pearson is appointed as Lead Counsel or as a member of the Steering Committee, he will continue to work cooperatively with both other plaintiffs' counsel, as well as defense counsel, in order to minimize contested issues for the Court while zealously representing the interests of the Consumer Plaintiffs and class members.

**III. Mr. Frei-Pearson And FBFG Have The Resources And
Commitment To Represent The Putative Class Members In This Litigation**

As a founding partner of FBFG, and with his lengthy experience in complex and class action litigation, Mr. Frei-Pearson well understands that this litigation demands both significant time and financial commitments from attorneys, particularly those in leadership roles. He is also aware that the leadership must ensure that this litigation moves efficiently before the Court. Mr. Frei-Pearson does not take these obligations lightly and would not ask the Court to appoint him as Lead Counsel, nor to the Steering Committee, unless he was certain he could meet these obligations. As discussed in more detail below, Mr. Frei-Pearson and FBFG have both the staff and the financial resources to lead and manage this case promptly and efficiently to a successful conclusion.

FBFG has the resources necessary to prosecute this action effectively and efficiently, and is both willing and able to commit the time and resources necessary to lead this case. Further, FBFG will ensure that there is no duplication of work and effort. With regard to offices and personnel, FBFG has a staff size of ten attorneys, a number that is large enough to ensure that the case will be effectively staffed, while at the same time lean enough to ensure that it will be efficient and avoid duplication of effort. Moreover, Mr. Frei-Pearson and FBFG are able to work collegially with other plaintiffs' attorneys and with colleagues in the defense bar and the Court to efficiently advance litigation.

**IV. Mr. Frei-Pearson And FBFG Have Investigated
The Facts And Researched The Legal Issues In This Case**

Prior to filing the their action, Mr. Frei-Pearson and FBFG conducted significant investigations into this matter and extensive legal analysis of the issues. Among other things, Mr. Frei-Pearson personally reviewed publicly available articles concerning Equifax and the data

breach, consulted with experts in the field, and personally spoke with potential Named Plaintiffs before filing Mr. Perkins' complaint. Mr. Frei-Pearson promptly filed a carefully-crafted complaint, one of the first in this District, drawing on his years of experience in data breach and identity theft cases.

Mr. Frei-Pearson collaborated directly with David Worley and other plaintiffs' counsel over the course of multiple telephone conferences and correspondence in carefully drafting the language for the proposed Case Management Order No. 2. Mr. Frei-Pearson personally attended the Initial Status Conference held on January 9, 2018 and has spoken with numerous colleagues at other firms about this case. Based on the developments throughout this case to date and multiple communications with his fellow counsel, Mr. Frei-Pearson has developed a viable strategy for moving the case forward should he be appointed as Lead Counsel. Mr. Frei-Pearson has demonstrated unwavering commitment to the plaintiff class and will continue to do so throughout this litigation.

V. Mr. Frei-Pearson Has Developed A Proposed Protocol To Ensure Efficiency

Mr. Frei-Pearson is fully aware that the Court expects counsel to prosecute the case efficiently and without duplication. To that end and subject to the Court's approval, Mr. Frei-Pearson would implement a comprehensive work assignment and billing protocol to ensure efficiency, which includes, without limitation, the following elements:

- If appointed as Lead Counsel, Mr. Frei-Pearson would establish a fee schedule that limits billing rates to no more than \$750 an hour for partners, no more than \$525 an hour for associates; and no more than \$195 an hour for paralegals and assistants.
- If appointed as Lead Counsel, Mr. Frei-Pearson will require all Plaintiffs' counsel to submit uniform monthly billing reports to Lead Counsel for auditing.

- Mr. Frei-Pearson and all attorneys at FBFG have kept contemporaneous time records, and will continue to do so. If appointed as Lead Counsel, Mr. Frei-Pearson will instruct all Plaintiffs' counsel to do so as well.
- Mr. Frei-Pearson and all attorneys at FBFG shall bill in increments no larger than a tenth of an hour. If appointed as Lead Counsel, Mr. Frei-Pearson will instruct all Plaintiffs' counsel to follow similar practices.
- If appointed as Lead Counsel, Mr. Frei-Pearson will establish that no work will be considered billable unless specifically assigned by Lead Counsel or the Steering Committee.
- If appointed as Lead Counsel, Mr. Frei-Pearson will establish that no more than two attorneys will appear for status hearings before the Court. For substantive hearings, such as hearings on Motion to Dismiss, Class Certification, Summary Judgment, etc., Mr. Frei-Pearson will use his discretion to staff the hearing efficiently and have only as many attorneys as truly necessary appear.
- If appointed as Lead Counsel, Mr. Frei-Pearson will staff the case efficiently on an as needed basis, with staff of appropriate seniority, skill set and expertise.
- If appointed as Lead Counsel, Mr. Frei-Pearson will limit his firm and all other firms to no more than three attorneys to bill on the case, unless a majority of Lead Counsel and the Steering Committee agree that circumstances warrant higher levels of staffing.
- If appointed as Lead Counsel, Mr. Frei-Pearson will establish a policy that, unless otherwise authorized due to special circumstances, Plaintiffs' counsel shall send no more than two attorneys and one paraprofessional to any deposition. When possible, counsel shall limit attendance to no more than one attorney.
- If appointed as Lead Counsel, Mr. Frei-Pearson shall only seek reimbursement for economy or coach-class airfare for travel, and will make reasonable arrangements for lodging. This shall include seeking reimbursement only for reasonable accommodations, not to exceed \$300 per night, plus tax, and per diem meal expenses will not exceed \$120 per person.
- If appointed as Lead Counsel, Mr. Frei-Pearson shall not seek reimbursement for expenses or costs incurred as part of normal overhead costs for running a law firm.

If necessary, Mr. Frei-Pearson will work with attorneys who fail to comply with the billing and efficiency protocols. Mr. Frei-Pearson will not bill for time expended in enforcing the protocols.

CONCLUSION

For the foregoing reasons, Jeremiah Frei-Pearson, on behalf of Plaintiff Dallas Perkins, Jeffrey Pryor, Kenneth Yoeckel, and LaShawn Brown, respectfully requests that this Court appoint Mr. Frei-Pearson as Lead Counsel for the Consumer Plaintiffs and classes, or in the alternative, as a member of the Steering Committee for this track. Mr. Frei-Pearson's knowledge, experience, professionalism, and dedication to the best interests of the class will be a significant asset to the class and the Court in this matter.

Respectfully submitted,

Dated: February 2, 2018

**FINKELSTEIN, BLANKINSHIP,
FREI-PEARSON & GARBER, LLP**

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